

ESTTA Tracking number: **ESTTA200895**

Filing date: **03/26/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	The Rudolph Company, L.P.
Granted to Date of previous extension	03/26/2008
Address	1619 Broadway, Suite 601 New York, NY 10019 UNITED STATES

Correspondence information	The Rudolph Company, L.P. 1619 Broadway, Suite 601 New York, NY 10019 UNITED STATES Manager@StNicholas.com
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Applicant Information

Application No	77240594	Publication date	11/27/2007
Opposition Filing Date	03/26/2008	Opposition Period Ends	03/26/2008
Applicant	PAC Jennic Inc. 197 Prince Street New York, NY 10012 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. All goods and services in the class are opposed, namely: A non-consumable, non-toxic novelty confetti item for children consisting of confetti, oats, glitter, grains, and cinnamon encased in a decorative pouch

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1508079	Application Date	03/26/1987
Registration Date	10/11/1988	Foreign Priority Date	NONE
Word Mark	RUDOLPH		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1948/08/25 First Use In Commerce: 1948/08/25 CHILDREN'S BOOKS, GIFT ENCLOSURE CARDS AND GREETING CARDS Class 028. First use: First Use: 1947/06/16 First Use In Commerce: 1947/06/16 CHRISTMAS TREE DECORATIONS, CHRISTMAS STOCKINGS, STUFFED TOY ANIMALS, MUSIC BOX TOYS [AND EQUIPMENT SOLD AS A UNIT FOR PLAYING A CARD GAME] Class 030. First use: First Use: 1948/09/24 First Use In Commerce: 1948/09/24 CANDY

U.S. Registration No.	1309723	Application Date	07/03/1980
Registration Date	12/18/1984	Foreign Priority Date	NONE
Word Mark	RUDOLPH THE RED-NOSED REINDEER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1947/00/00 First Use In Commerce: 1947/00/00 Filmstrips With and Without Sound Tracks Class 016. First use: First Use: 1947/00/00 First Use In Commerce: 1947/00/00 Coloring and Activity Books Class 028. First use: First Use: 1947/00/00 First Use In Commerce: 1947/00/00 Equipment Sold as a Unit for Playing Board and Dart Board Games, Stuffed Toys, Christmas Tree Ornaments, Hand Puppets and Jigsaw Puzzles		

U.S. Registration No.	1554634	Application Date	10/19/1987
Registration Date	09/05/1989	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1985/00/00 First Use In Commerce: 1985/00/00 GREETING CARDS, COMIC BOOKS [AND MUSIC BOX BOOKS] Class 020. First use: First Use: 1985/00/00 First Use In Commerce: 1985/00/00 NOVELTY ITEMS, NAMELY, ELECTRICAL LIGHTED BUTTONS Class 028. First use: First Use: 1977/00/00 First Use In Commerce: 1977/00/00 PLUSH TOYS, BALLOONS [AND EQUIPMENT SOLD AS A UNIT FOR PLAYING A BOARD GAME] Class 030. First use: First Use: 1984/00/00 First Use In Commerce: 1984/00/00 CANDY Class 035. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 SERVICES IN LICENSING USE OF THE NAME AND IMAGE OF A FICTIONAL CHARACTER IN CONNECTION WITH VARIOUS GOODS AND PRODUCTS, NAMELY, BOOKS, STATIONARY, PAPER GOODS, CLOTHING, CANDY, [TOYS] AND GAMES		

U.S. Registration No.	1974435	Application Date	01/09/1989
Registration Date	05/21/1996	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	THE MARK COMPRISES A RED-TIPPED NOSE ON ANY FANCIFUL DEER-LIKE ANIMAL.		
Goods/Services	<p>Class 009. First use: First Use: 1965/00/00 First Use In Commerce: 1965/00/00 PRERECORDED AUDIO AND VIDEO TAPES, [TRANSPARENCIES FOR VIEWING AND FILM STRIPS]ALL CONTAINING CHILDREN'S ENTERTAINMENT</p> <p>Class 016. First use: First Use: 1977/00/00 First Use In Commerce: 1977/00/00 CHILDREN'S BOOKS, PAPER PARTY GOODS - NAMELY, NAPKINS, TABLECLOTHS [AND HATS]</p> <p>Class 020. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00 NOVELTY ITEMS, NAMELY, MUSICAL AND LIGHTED PIN-ON BUTTONS, WOODEN FIGURES AND STATUETTES, WOODEN [PLANT HOLDERS AND]CENTERPIECES</p> <p>Class 021. First use: First Use: 1984/00/00 First Use In Commerce: 1984/00/00 GLASS AND CRYSTAL FIGURINES</p> <p>Class 025. First use: First Use: 1970/00/00 First Use In Commerce: 1970/00/00 CLOTHING, NAMELY, SWEATSHIRTS, LIGHTED SWEATSHIRTS AND MASQUERADE COSTUMES</p> <p>Class 028. First use: First Use: 1952/00/00 First Use In Commerce: 1952/00/00 MUSICAL PLUSH TOYS, PUPPETS, MECHANICAL PLUSH TOYS AND BALLOONS, CHRISTMAS TREE ORNAMENTS AND DECORATED CHRISTMAS STOCKINGS</p> <p>Class 030. First use: First Use: 1984/00/00 First Use In Commerce: 1984/00/00 CANDY</p> <p>Class 035. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00 SERVICES IN LICENSING THE NAME AND LIKENESS OF A FICTIONAL CHARACTER IN CONNECTION WITH VARIOUS GOODS AND PRODUCTS, NAMELY, PRERECORDED TAPES, BOOKS, STATIONERY, PAPER GOODS, NOVELTY ITEMS OF WOOD AND PLASTIC, CRYSTAL FIGURINES, CLOTHING, TOYS AND GAMES, CANDY, AND ENTERTAINMENT SERVICES</p> <p>Class 042. First use: First Use: 1964/00/00 First Use In Commerce: 1964/00/00 ENTERTAINMENT SERVICES IN THE NATURE OF ANIMATED CARTOON TELEVISION SHOWS</p>		

Attachments	73690240#TMSN.gif (1 page)(bytes) 73773767#TMSN.gif (1 page)(bytes) New Notice of Opp (F0247896).PDF (5 pages)(919544 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Signature on Attached Document/
Name	The Rudolph Company, L.P.
Date	03/26/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In The Matter Of Application Serial No. 77/240,594

THE RUDOLPH COMPANY, L.P.,	:	
	:	
Opposer,	:	
	:	
-v-	:	Opposition No.
	:	
PAC JENNIC INC.,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Box TTAB - Fee
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Opposer, The Rudolph Company, L.P., a Delaware limited partnership, believes that it will be damaged by registration of the mark shown in Application Serial No. 77/240,594 filed on July 27, 2007 and published on December 27, 2007, and hereby opposes this application (the "Opposed Mark"). As grounds for opposition, Opposer alleges:

1. Opposer is the owner of the trademark and service marks RUDOLPH, RUDOLPH THE RED-NOSED REINDEER, The Design Of A Reindeer With A Shiny Nose, and The Design Of A Red-Tipped Nose On Any Fanciful Deer-Like Animal which it and its predecessors and licensees have used for many years on and in connection with a wide variety of goods and services, including entertainment properties (such as television programs and motion pictures), books, games, toys, clothing, Christmas tree ornaments, puppets, puzzles, greeting cards, stuffed animals, music boxes, candy, and other items.

2. Opposer is the owner of U.S. Trademark Registration No. 1,508,079 for RUDOLPH, registered on the Principal Register in the United States Patent and Trademark Office on October 11, 1988 for a variety of goods, including children's books in Class 16, Christmas tree decorations, Christmas stockings and stuffed toy animals in Class 28, and candy in Class 30. This registration is valid and subsisting and in full force and effect, and it has become incontestable under Section 15 of the Trademark Act of 1946, 15 U.S.C. § 1065.

3. Opposer is the owner of U.S. Trademark Registration No. 1,309,723 for RUDOLPH THE RED-NOSED REINDEER, registered on the Principal Register in the United States Patent and Trademark Office on December 18, 1984 for a variety of goods, including coloring and activity books in Class 16 and games, toys, Christmas tree ornaments, hand puppets, and jigsaw puzzles in Class 28. This registration is valid and subsisting and in full force and effect, and it has become incontestable under Section 15 of the Trademark Act of 1946, 15 U.S.C. § 1065.

4. Opposer is the owner of U.S. Trademark Reg. No. 1,554,634 for the Design Of A Reindeer With A Shiny Nose for a wide variety of goods and services, including "services in licensing use of the name and image of a fictional character in connection with various goods and products." This registration is valid and subsisting and in full force and effect, and it has become incontestable under Section 15 of the Trademark Act of 1946, 15 U.S.C. § 1065.

5. Opposer is the owner of U.S. Trademark Reg. No. 1,974,435 for The Design Of A Red-Tipped Nose On Any Fanciful Deer-Like Animal registered in the United States Patent and Trademark Office on May 21, 1996 for a variety of goods and services, including "services in licensing the name and likeness of a fictional character in connection with various goods and products." This registration is valid and subsisting and in full force and effect, and it has become incontestable under Section 15 of the Trademark Act of 1946, 15 U.S.C. § 1065.

6. The Opposed Mark is RUDOLPH DUST.

7. The Opposed Mark seeks registration for the following goods: "Non-consumable, non-toxic novelty confetti item for children consisting of confetti, oats, glitter, grains and cinnamon encased in a decorative pouch," in Class 28.

COUNT I

8. Applicant's goods are competitive with, or closely related to, the goods and services on which Opposer and its predecessors and licensees have used the marks RUDOLPH, RUDOLPH THE RED-NOSED REINDEER, The Design Of A Deer With A Shiny Nose, and The Design Of A Red-Tipped Nose On Any Fanciful Deer-Like Animal.

9. The Opposed Mark so resembles Opposer's marks as to be likely, when used on or in connection with the applicant's goods, to cause confusion, to cause mistake, or to deceive. The Opposed Mark therefore is unregistrable under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052.

10. Opposer would be injured by the granting to applicant of a certificate of registration for the Opposed Mark for which registration is sought, because the Opposed Mark, when used on or in connection with applicant's goods, would tend to damage Opposer's goodwill in its marks.

COUNT II

11. Opposer's marks are famous and distinctive for purposes of Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1125(c).

12. The Opposed Mark will dilute the distinctive quality of Opposer's famous marks in that it will lessen the capacity of Opposer's marks to identify and distinguish goods or services, in violation of Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1125(c). The Opposed

Mark is therefore unregistrable pursuant to Sections 2 and 13(a) of the Trademark Act of 1946, 15 U.S.C. §§ 1052 and 1063(a).

13. Opposer would be injured by the granting to applicant of a certificate of registration for the Opposed Mark for which registration is sought, because the Opposed Mark, when used on or in connection with applicant's goods, would dilute the distinctive quality of Opposer's mark.

WHEREFORE, Opposer respectfully requests that this opposition be sustained, and that the application for registration be denied.

The opposition fee in the sum of \$300.00 is enclosed.

Dated: New York, New York
March 26, 2008

Respectfully submitted,

THE RUDOLPH COMPANY, L.P.

By: ST. NICHOLAS MUSIC INC.
A General Partner

By: 
David Marks
St. Nicholas Music Inc.
1619 Broadway, Suite 601
New York, NY 10019
(212) 996-5900

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Notice of Opposition to be sent by prepaid first-class mail to PAC JENNIC INC, #2 197 Prince Street, New York, New York 10012-2981, this 26th day of March 2008.

A handwritten signature in black ink, appearing to read 'David Marks', is written over a horizontal dotted line.

David Marks